

by one of the counsel for the defendants is sound, that the law-making power of the state governments is unrestrained, except by the constitution ; still, as it seems to me, the appropriation, by law, of private property to the public use, without compensating the owner, could not be tolerated.

The sixth article of the bill of rights separates the legislative, executive and judicial departments of the government, and makes the separation permanent. And, the 21st article of the same instrument says, "that no freeman ought to be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or the law of the land."

These provisions were, undeniably, intended as restraints upon the legislative power, by means of the courts of justice, charged with the administration of the law. The words, "by the law of the land," which are copied from *Magna Charta*, are understood to mean, due process of law, that is, a regular trial according to the course and usage of the common law ; and the words, "the judgment of his peers," mean, a trial by jury according to the course of the same law. 2 *Kent's Com.*, 13 ; 9 *G. & J.*, 412.

The legislative department of the government makes the law, or prescribes general rules for the government of the community ; but it cannot deprive an individual of his property—because, to do so, is to pronounce a sentence, and not to enact a law ; and, in the language of the Court of Appeals, to pronounce sentence without a hearing, or giving to the party whose property is taken, an opportunity of defending his rights against the attempted invasion.

This view of the subject does not interfere with the due exercise of the right of eminent domain, which gives to the legislature the power to take private property for the public use. When this power is exerted, the government is bound to provide some tribunal for the assessment of the compensation, before which the parties may meet and discuss their rights, face to face. But, to say that the legislature may, by its own act,